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Supreme Court, U. S.
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No. 99-824

IN THE

Supreme Court of the United States

ELNORA MAE BOYD, Individually and as Personal Representative of the Estate of Richard Boyd,

Petitioner,

v.

WATERFRONT EMPLOYERS – I.L.A. in the Ports of South Carolina Pension Plan,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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ARGUMENT FOR DENYING THE PETITION

Rule 10 of the Rules of this Court requires compelling reasons for reviewing issues on certiorari. No compelling reasons exist for review of the decision and judgment of the Fourth Circuit Court of Appeals.

The decision sought to be reviewed deals with the discretionary authority of an ERISA fiduciary to determine eligibility for benefits and to construe the terms of a qualified ERISA Plan. In the instant case, the Court of Appeals noted: "The Trustees decided not to award the benefits and acted within their discretion and consistent with South Carolina law." *See* p. 1, *Appendix of Petitioner*. The decision of the Court of Appeals upheld the Trustees' discretion in interpreting the Plan at issue, and determining eligibility for benefits under that Plan. In this context, the Trustees construed the term "eligible spouse" as defined under the Plan, as a spouse who is legally married to a member of the Plan at his death in order to qualify for surviving spouse benefits. Both the Court of Appeals and the district court noted that the interpretation of the Trustees limiting spousal benefits to "legally married" spouses prevents the problem of multiple persons claiming the same surviving spousal benefit under the Plan. (pp. 6, 11, *Appendix of Petitioner*).

In this context, it is well settled that determination of benefits and construction of the Plan by fiduciaries is given considerable respect by the courts and will not be reversed absent an abuse of discretion. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). This standard of review was established unambiguously by this Court in *Firestone*, and is a firmly rooted principle of law today.

In the face of this, Petitioner seeks a review of the Court of Appeals based on its misapplication of the abuse of discretion standard to the decision below. However, a petition for a writ of certiorari is rarely granted where the asserted error consists of "the misapplication of a properly stated rule of law." Rule 10.

Secondly, there is no conflict in the United States Court of Appeals respecting a decision on an important matter as envisioned by the rules governing certiorari. The conflict which Petitioner seeks to create is based on the refusal of the Fourth Circuit Court of Appeals to request certification to the South Carolina Supreme Court to determine whether the putative spouse doctrine would be adopted in South Carolina. In contrast, the United States Second Circuit Court of Appeals in *Grabois v. Jones*, 77 F.3d 574 (1996) requested certification of a similar issue to the New York State Appellate Court. The New York Appellate Court, in its discretion, declined to accept the certification.

The rule governing certification from federal courts to the South Carolina Supreme Court is SCACR 228, which provides in pertinent part:

> (a) **Scope of Certification**. The Supreme Court *in its discretion may answer* questions of law certified to it by any federal court of the United States or the highest appellate court or an intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying

> court there is no controlling precedent in the decisions of the Supreme Court.

(Emphasis added.) The fact that a question is sought to be certified to the South Carolina Supreme Court does not mean that it will be accepted.

In sum, a decision by one United States Court of Appeals to request certification of an issue to a state court of precedent, and the refusal of another Court of Appeals to request certification of a similar issue to another state court of precedent, is not the type of split of authority within the circuits which justifies a review by this court. In both circumstances, the Courts of Appeal are asking state courts of precedent to determine issues peculiar to state law only; and in the instant case, the issue would have no bearing on the decision of the Trustees.[1]

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1. The Putative Spouse Doctrine does not imbue the putative spouse the status of a legal spouse. It simply effects equity by ignoring the fact that the putative spouse is not a legal spouse in certain circumstances. *See* Petitioner's Petition, p. 6. Thus, even if this doctrine were adopted as the law of South Carolina, it could not override the clear requirement of the Plan in question, that a surviving spouse must have been a "legally married" spouse to obtain surviving spouse benefits. This clear provision prevents multiple claimants.

CONCLUSION

In the instant case, Petitioner requests this Court to review what is claimed to be the Fourth Circuit Court of Appeals' misapplication of the abuse of discretion standard to an ERISA fiduciary decision regarding construction of a qualified Plan and eligibility for benefits under the Plan. Misapplication of a properly stated legal principle is not a ground for review on certiorari. Further, Petitioner urges a conflict in the Circuits respecting "an important matter." The claimed important matter is the request of the Second Circuit for certification of the putative spouse doctrine to a New York State Court of Precedent, and the Fourth Circuit's refusal in the instant case to seek certification to the South Carolina Supreme Court. The certification procedure places discretion in the respective state courts to deny the request. Further, the certification procedure deals only with questions of state law, not federal law nor state law in conflict with federal law.

These are not the types of issues which establish a compelling reason for a petition for writ of certiorari to be granted.

Respectfully submitted,

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